IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 796 of 2005

Dr.Raosaheb Reuba Pawar .. Appellant

versus

The State of Maharashtra & Anr. .. Respondents

...

Mr.R.V. More for the appellant.

Mrs.G.P. Mulekar AGP for the respondents

CORAM : B.H. MARLAPALLE,J

DATED : 5th September 2005

P.C.:

1. Special Civil Suit no.183 of 1986 was filed by the present appellant challenging the notice of termination dated 8th October 1986. Admittedly, the appellant is a Government servant i.e. Government of Maharashtra. The defendants State Authorities raised

the preliminary issue of jurisdiction and the trial Court held that against the defendants. However, it dismissed the suit on merits on 27th April 1998. The appellant therefore, filed regular Civil Appeal no.255 of 1998 and while dismissing the same, the learned 2nd Additional District Judge at Sangli vide his judgement and order dated 25th June 2004 held that the trial Court did not have the jurisdiction to entertain the suit and in view of the provisions of the Administrative Tribunals Act 1985, the suit was not maintainable before the trial Court.

The judgement and decre passed by the trial Court was set aside as being non-est and the plaint was returned to the plaintiff under Order VII Rule 10 of the Code of Civil Procedure.

2. Admittedly, the appointment letters issued to the appellant right form 18.3.1981 and which are brought on record as Exhibit-57 to 60 and 66 were issued either by the Dy. Director of Health Services or the Joint Director of Health Services, Government of Maharashtra. By another letter dated 4th March 1985 (Exhibit-72) the services of the plaintiff as a bonded candidate were regularised for a further period of two years or till the regular selection was

made through the MPSC whichever is earlier in the Maharashtra Medical and Health Services - Class II. The impugned notice of termination dated 8th October 1986 was also issued by the Asstt. Secretary in the Public Health Department, Mantralaya. Thus, the plaintiff was in the service of the Government of Maharahstra though he was posted under the Zilla Parishad. When the Maharashtra Administrative Tribunal was established u/s.14(3) of the Administrative Tribunals Act, Special Civil Suit no.183 of 1986 was pending before the trial Court and therefore, it was required to be transferred to the Tribunal u/s.29 of the said Act. However, the point of jurisdiction raised before the trial Court was answered in favour of the plaintiff and the State Government in the appeal filed by the plaintiff re-agitated the same issue under Order 41 Rule 22 of the Code of Civil Procedure. The objection raised by the State Government has been upheld by the Lower Appellate Court. The appeal i.e. Regular Civil Appeal no.255 of 19998 was an extension of the suit and therefore, the lower appellate Court could have been persuaded by either of the parties to transfer the appeal to the lower appellate Court rather than returning the plaint under Order 7 Rule 10 of the Code of Civil Procedure.

3. By returning the plaint, the plaintiff would be required to file a fresh original application before the Maharashtra Administrative Tribunal and obviously it would be after about 19 years from the date of cause of action. The issue of limitation would certainly come in the way of the plaintiff and thus the impugned order passed by the lower Appellate Court to that extent may result in miscarriage of justice. The view taken by the lower Appellate Court that the suit was not maintainable does not suffer from any error but at the same time, the order returning the plaint under Rule 10 of Order VII of the Code of Civil Procedure has resulted in irrepairable loss to the plaintiff and therefore, the impugned order is required to be modified while disposing off this appeal.

4. Hence, the appeal is disposed of in terms of the following order:

a) the view taken by the Lower Appellate Court that the trial Court did not have the jurisdiction to entertain the suit is hereby confirmed,

b) the decree passed by the trial Court is set

aside as the decree being non-est and

c) Special Civil Suit no.183 of 1986 shall be transferred along with Regular Civil Appeal no.255 of 1998 to the Maharashtra Administrative Tribunal (Principal Bench) within a period of four weeks from today.

4. Writ to go to the Lower Court forthwith.

B.H. MARLAPALLE, J